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BILL ANALYSIS

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Senate Bills 129 (Substitute S-3 as passed by the Senate)
Senate Bills 130 through 132 (as passed by the Senate)
Sponsor: Senator Sam Singh (S.B. 129)
Senator Kristen McDonald-Rivet (S.B. 130)
Senator Mary Cavanagh (S.B. 131)
Senator Sue Shink (S.B. 132)
Committee: Housing and Human Services

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INTRODUCTION

Senate Bill 129 (S-3) would expand the definition of "eligible activity" to include "housing development activity" and allow the State Brownfield Redevelopment Fund to be used to distribute revenue deposited into the Fund from a brownfield redevelopment plan that included housing development activities. The bill would specify that certain work plans or combined brownfield plans that requested reimbursement for housing development activities would have to be approved by the Michigan State Housing Development Authority (MSHDA). Additionally, the bill would increase the amount for reasonable costs of a brownfield plan or work plan implementation and increase the amounts of tax increment revenue attributable to local taxes a brownfield redevelopment authority could use each fiscal year. The other bills in the package would modify Michigan Compiled Law references in other acts to reflect the proposed amendments in Senate Bill 129 (S-3).

BRIEF RATIONALE

Generally, brownfields are previously developed sites that have barriers to redevelopment due to contamination or blight. According to testimony, the State needs more resources to address housing gaps. Accordingly, it has been suggested that the Brownfield Redevelopment Financing Act be amended to expand the use of tax increment financing for brownfield redevelopment of housing.

BRIEF FISCAL IMPACT

The bills, primarily Senate Bill 129 (S-3), would have an indeterminate negative fiscal impact on State and local government. Because the bill could result in an increase in eligible brownfield redevelopment projects, it likely would decrease State and local tax revenue and reduce the overall revenue for the School Aid Fund through a decrease in the State Education Tax. In addition, because the Department of Environment, Great Lakes, and Energy (EGLE) has review and permitting roles throughout the progress of a brownfield redevelopment project, any increase in eligible projects could result in an increase in labor and costs for EGLE. Lastly, the bill would have a small negative impact on MSHDA within the Department of Labor and Economic Opportunity (LEO). This impact would result from increased administrative costs for new tasks and reporting requirements under the bill.

MCL 125.2652 et al. (S.B. 129)
211.7gg (S.B. 130)
205.94dd (S.B. 131)
205.54d (S.B. 132)

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CONTENT

Senate Bill 129 (S-3) would amend the Brownfield Redevelopment Financing Act to do the following:

- Modify the definition of eligible activities to include housing development activities.**
- Allow the State Brownfield Redevelopment Fund to be used to distribute revenue deposited into the Fund from a brownfield redevelopment plan that included housing development activities and that was approved by MSHDA to the Housing Development Fund.**
- Allow MSHDA to approve combined brownfield plans or work plans.**
- Allow the tax from the school operating tax be exempt from capture if there were another approved local contribution to the project that provided a value reasonably equivalently to that percentage of local capture.**
- Specify that if a work plan or combined brownfield plan were requesting reimbursement for housing development activities, the work plan or combined brownfield plan would have to be approved by MSHDA unless the housing property for which the development activities were identified under the plan were sold or rented at a market rate and would not be subsidized.**
- Increase the amount for reasonable costs of brownfield plan or work plan implementation from \$30,000 to \$50,000.**
- Increase the amounts of tax increment revenue attributable to local taxes that an authority could use in each fiscal year.**
- Require a brownfield redevelopment authority to report certain information to MSHDA.**

Senate Bill 130 would amend the General Property Tax Act to change a citation to a Michigan Compiled Laws (MCL) section that Senate Bill 129 would amend.

Senate Bill 131 would amend the Use Tax Act to change citations to an MCL section that Senate Bill 129 would amend.

Senate Bill 132 would amend the General Sales Tax Act to change citations to an MCL section that Senate Bill 129 would amend.

Senate Bills 130, 131, and 132 are tie-barred to Senate Bill 129.

Senate Bill 129 is described in greater detail below.

Eligible Activities; Eligible Property

Generally, "eligible activities" include activities for which a brownfield redevelopment authority may spend tax increment revenues to acquire or prepare eligible property. The Act specifies eligible activities for all eligible properties and for eligible properties that meet certain requirements. For example, for all eligible properties, eligible activities include Department of Environment, Great Lakes, and Energy (EGLE) specific activities, relocation of public buildings or operations for economic development purposes, and reasonable costs of environmental insurance, among other things.

Under the bill, "eligible activities" also would include, for local housing property located in a community that had identified a specific housing need and had absorption data or job growth data included in the brownfield plan, the following:

- The activities of a brownfield plan that were used or are currently used for a commercial, industrial, public, or residential purposes, or former dumps, landfills, and other areas filled with nonnative material.
- Housing development activities.
- Infrastructure improvements that were necessary for housing property and support housing development activities.
- Site preparation that was not a response activity and that supported housing development activities.

Additionally, under the bill, "eligible activities" would include costs to implement, monitor, and maintain, compliance with the income and price monitoring responsibilities associated with housing development activities. The bill also would include among "eligible activities" site improvements that were not a response activity.

Under the Act, "eligible property" means property for which eligible activities are identified under a brownfield plan that was used or is currently used for commercial, industrial, public, or residential purposes including personal property to the extent included in the brownfield plan if it meets certain conditions. Under the bill "eligible property" also would include former dumps, landfills, and other areas filled with nonnative material that met one of the conditions listed in the Act. Additionally, "eligible property" would include housing property for which eligible activities were identified under a brownfield plan, including personal property located on the property, to the extent included in the brownfield plan.

"Housing development activities" would mean one or more of the following:

- Reimbursement provided to owners to rental housing for qualified rehabilitation.
- Costs for public infrastructure and safety improvements necessary for a housing project.
- Costs of demolition and renovation of existing buildings and site preparation, to the extent necessary to accommodate an income qualified purchaser household or income qualified renting household.
- Temporary household relocations costs for an income qualified household for a period not to exceed one year.
- Acquisition cost for blighted or obsolete rental units, to the extent the acquisition would promote rehabilitation or adaptive reuse of the blighted or obsolete rental unit to accommodate an income qualified purchaser household or income qualified renting household.
- Establishing a reserve, under the control of the authority or a local housing commission for qualified rental assistance payments to income qualified renting households; however, the reserve would have to be qualified as part of the post completion determination of eligible costs.
- Reimbursement provided to a developer to fill a financing gap associated with the development of housing units priced for income qualified households and to assist with the costs related to infrastructure improvements and site preparation that is not a response activity and that is necessary for new housing development for income qualified households on eligible property.

"Housing property" would mean one or more of the following:

- A property on which one or more units of residential housing are proposed to be constructed or rehabilitated and located in a mixed-use project.
- One or more units of residential housing proposed to be constructed or rehabilitated and located in a mixed-use project.

"Household income" would mean all the income received by all the individuals who are at least 24 years old when the household income is determined and who reside in a household while members of the household.

"Income qualified household" would mean a person, a family, or unrelated persons living together, whose annual income is not more than 120% of the area median income. "Area median income" would mean the median income for the area as determined by Section 8 of the United States Housing Act, adjusted for family size. (Generally, Section 8 of the United States Housing Act requires the Department of Housing and Urban Development to create and update income limits to reflect changes in median family income levels for different size households and income limits. The median income limits are developed by the fair market rent calculation defined in the Housing Act.)

"Income qualified purchaser household" would mean a purchaser who is, or who is a member of, an income qualified household.

"Income qualified renting household" would mean a renter who is, or who is a member of an income qualified household.

Under the Act, "owned by or under control of" means a land bank fast track authority or a qualified local unit of government that met certain conditions. Under the bill "owned by or under control of" would mean a land bank fast track authority, a *municipality*, or qualified local governmental unit that met certain conditions.

"Previously developed property" means a property that was part of an existing developed residential, commercial, or industrial zone and contained a structure serviced by utilities, or former dumps, landfills, and other areas filled with nonnative material.

"Qualified rehabilitation" would mean rehabilitation of existing structures that is necessary to make a housing unit suitable for sale to an income qualified purchaser household or rent to an income qualified renting household. Qualified rehabilitation also would include proposed rehabilitation that would bring the structure into conformance with minimum local building code standards or improve the livability of the units while meeting minimum local building code standards.

"Specific Taxes" mean a tax levied under the Commercial Development Act, the Enterprise Zone Act, the Technology Park Development Act, the Obsolete Property Rehabilitation Act, the Neighborhood Enterprise Zone Act, the Commercial Rehabilitation Act, or the portion of the tax levied under the Tax Reverted Clean Title Act. Under the bill, "specific taxes" also would include taxes levied under the Attainable Housing Act and the Residential Housing Facilities Act.

Tax Increment Revenue

Under the Act, "tax increment revenue" means the amount of ad valorem property taxes and specific taxes attributable to the application of the levy of all taxing jurisdictions on the captured taxable value of each parcel of eligible property subject to a brownfield plan and personal property located on that property, regardless of whether those taxes began to be levied after the brownfield plan was adopted. The term does not include, among other things, the amount of ad valorem property taxes captured by a downtown development authority under Part 3 (Tax Increment Finance Authorities), Part 4 (Local Development Finance Authorities), or Part 6 (Corridor Improvement) of the Recodified Tax Increment Financing Act. Under the bill, the revenue source would be exempt unless these other authorities agreed to forgo or transfer their taxes in support of the brownfield plan.

Brownfield Revolving Fund

The Act allows an authority to establish a local brownfield revolving fund and specifies the sources that may be deposited into the fund. Excess taxes increment revenue from taxes levied for school operating purposes by the Michigan Strategic Fund (MSF) may not be captured for deposit in the local brownfield revolving fund. Under the bill, excess tax increment revenue from taxes levied for school operating purposes authorized by MSHDA also could not be captured for deposit.

Under the Act, the local brownfield revolving fund can may be used only to pay the costs of eligible activities on property that is located within the municipality and meets certain conditions. The bill specifies that this would apply regardless of whether the property was included in the brownfield plan.

State Brownfield Redevelopment Fund

Under the Act, the State Brownfield Redevelopment Fund is created as a revolving fund within the Department of Treasury. The Fund may be used only for specified purposes. Under the bill, the Fund could be used to distribute revenue deposited into the Fund from a brownfield redevelopment plan that included housing development activities and that was approved by MSHDA to the Housing Development Fund.

Brownfield Plan

The Act specifies that a brownfield plan can apply to one or more parcels of eligible property and can be amended to apply to additional eligible parcels. Unless otherwise authorized by the Act, if one or more eligible property is included within the plan, the tax increment revenue under the plan is determined individually for each eligible property. Each plan or amendment must be approved by a governing body of the municipality and contain specified information.

If taxes levied for school operating purposes are subject to capture, the percentage of school operating tax increment revenues captured relating to a parcel of eligible property under a brownfield plan may not be greater than the percentage of local tax increment revenues that are captured under the plan relating to that parcel of eligible property. Under the bill, the percentage of school operating tax increment revenue could not be captured unless there was another approved local contribution to the project that provided a value reasonable equivalent of that percentage of local capture.

Tax Increment Revenues

The Act prohibits an authority from spending tax increment revenue to acquire or prepare eligible property unless the acquisition or preparation is an eligible activity. Additionally, an authority is prohibited from entering into agreements with the taxing jurisdictions and the governing body of the municipality to share a portion of the taxes captured from an eligible property. Under the bill, this prohibition would apply unless an agreement was related to another tax increment finance authority that had been established under the Recodified Tax Increment Finance Act, that waived or transferred its tax capture to allow an authority to instead capture and utilize those taxes to pay for the eligible activities for an eligible property and only for a period that did not exceed the duration of the plan for that eligible property.

Under the Act, if a brownfield plan includes the use of taxes levied for school operating purposes captured from an eligible property for eligible activities that are not EGLE-specific activities then more one or more specified requirements apply.

A combined brownfield plan or work plan must be approved by the MSF and a development agreement between the municipality or authority and an owner or developer of an eligible property is required before the tax increment may be used for certain purposes. Under the bill, if the provision below were not satisfied, approval and the agreement would be required before the tax increment could be used for housing development activities.

If the work plan or combined brownfield plan had to be approved by MSHDA, a development agreement or reimbursement agreement between the municipality or authority and an owner or developer of an eligible property that stipulated price and income monitoring for residential units would be required before the tax increment could be used for housing development activities. The work plan or combined brownfield plan would not be required to be approved by MSHDA if all the housing property for which housing development activities were identified under the plan would be sold or rented at a market price and would not be subsidized.

The combined brownfield plan or work plan submitted to the MSF has to be in a form prescribed by the MSF. Under the bill, either would have to be submitted to the MSF or MSHDA, as applicable.

Administrative Costs

The Act allows an authority to use taxes captured from eligible properties to pay for administrative and operating costs, including reasonable costs of developing and preparing brownfield plans, combined brownfield plans, or work plans for which tax increment revenue may be used. These reasonable costs include certain legal and consulting fees that are not in the ordinary course of acquiring and developing real estate. Under the bill, the reasonable costs also would include costs to implement, monitor, and maintain compliance with the income and price monitoring responsibilities associated with housing development activities, fees and expenses, including licensing, permitting, planning, engineering, architectural, testing, legal, and accounting fees, not included in the legal and consulting fees as described above.

Under the Act, reasonable costs of brownfield plan or work plan implementation include tracking and reporting data. The bill would specify that the reasonable costs of brownfield plan or work plan implementation also would include costs to implement, monitor, and maintain compliance with the income and price monitoring responsibilities associated with housing development activities.

Additionally, the reasonable costs of brownfield plan or work plan implementation cannot exceed \$30,000. Under the bill, these reasonable costs could not exceed \$50,000.

In each fiscal year of the authority, the amount of tax increment revenues attributable to local taxes and school taxes that an authority can use for certain administrative and operational expenses of an authority is determined by the number of active projects each authority operates. The bill would modify these amounts as shown in the table below.

("Active project" means a project in which the authority is currently capturing taxes. Under the bill, "active project" also would mean a project for which an authority has ongoing obligations to implement, monitor, or maintain compliance with the income and price monitoring responsibilities associated with housing development activities.)

Number of Projects an Authority Operates	Current Amount	Proposed Amount
Five or fewer active projects	\$100,000	\$125,000
Six or more, but fewer than 11 active projects	\$125,000	\$165,000
11 or more, but fewer than 16 active projects	\$150,000	\$200,000
16 or more, but fewer than 21 active projects	\$175,000	\$220,000
21 or more, but fewer than 26 active projects	\$200,000	\$250,000
26 or more, but fewer than 31 active projects	\$300,000	\$400,000
31 or more, but fewer than 54 active projects	\$500,000	\$650,000
54 or more, but fewer than 74 active projects	\$700,000	\$900,000
74 or more, but fewer than 99 active projects	\$900,000	\$1.4 million
99 or more active projects	\$1.0 million	\$2.0 million

Tax Capture

The Act allows a brownfield authority to capture taxes for the payment of interest and if an authority reimburses a person or entity for an advance for the payment or reimbursement of the cost of eligible activities that are not EGLE-specific activities and interest on those activities included in a combined brownfield plan or a work plan approved by the MSF, the authority may capture the taxes levied for school operating purposes and local taxes for the payment of that interest based on MSF approval. Under the bill, this also would apply to a plan approved by MSDHA.

Currently, there are limitations on the use of taxes levied for school operating purposes, these limitations do not apply to the costs of certain activities incurred by a person other than the authority. Under the bill, the limitations the costs would not apply to asbestos, mold, lead, and building hazardous materials abatement and demolition, in an amount no greater than \$250,000.

Public Hearing

The Act requires a governing body to hold a public hearing on the brownfield plan before approval and specifies the public hearing process for brownfield plan approval. At least 10 days before the hearing on the plan, the governing body must notify EGLE regarding the hearing if the plan involves the uses of taxes levied for school operating purposes to pay for eligible activities that require the approval of a combined brownfield plan or work plan developed by EGLE. Under the bill, this requirement also would apply if the plan involved the use of taxes levied for school operating purposes to pay for eligible activities that required the approval of MSHDA, or its designee, if the brownfield plan involved the use of taxes levied to pay for specified eligible activities when 50% or more of the project is dedicated to residential use.

Work Plan Approval

Under the Act, to seek MSF approval of a work plan an authority must submit specified documents for each eligible property, e.g., a copy of the brownfield or transformational brownfield plan, and a summary of available information on the historical and current use of each eligible property. Under the bill, these requirements would be extended to MSHDA approval for a work plan.

In addition, for work plans that included housing development activities, an authority also would have to submit a summary for proposed income and price monitoring responsibilities and related expenses.

After receiving a request for approval of a work plan, the MSF must provide one of the written responses described below to the requesting authority within 60 days following receipt of a request for approval or within seven days following the first meeting of the board after the 60-day period following the receipt of the request for approval, whichever is later. The bill specifies that MSHDA also would have to provide one of the specified responses after receiving a request to approve a work plan. In addition, the bill would allow an authority to resubmit a work plan if it were denied in whole or in part by the MSF or MSHDA.

The Act specifies that in its review of a work plan, the MSF must consider specified criteria to the extent reasonably applicable to the type of activities proposed as part of the that work plan when approving or denying that part of the plan.

Instead, under the bill, in its review of a work plan for approval or denial, the MSF or MSHDA would have to consider the prescribed criteria to the extent reasonably applicable to the type of activities proposed as part of the work plan or applicable portion of that work plan.

In addition to the currently prescribed criteria, during the reviewal process, if housing development activities were included in the work plan, the MSF or MSHDA could consider the following:

- Alignment with the statewide housing plan developed.
- The capacity of the entity or agency that was monitoring price and income, and the duration of the monitoring.
- Whether the project would support housing at price points that aligned with the local workforce.
- If the property would be deed restricted to regulate short-term rentals or otherwise ensured long-term local housing needs.

The Act specifies that if the MSF fails to provide a written response after receiving a request for approval of a work plan within specified time periods, depending on the underlying circumstances, the eligible activities are considered to be approved and the authority may proceed with the eligible activities as outline in the work plan. Under the Act, the MSF's approval of a work plan is final. The bill would also apply these provisions to MSHDA, and to specify that the approval or denial process would apply to a work plan and approval made by MSHDA would be final (as it currently is for the MSF).

Under the Act, if a brownfield plan includes capture of taxes levied for school operating purposes, a chairperson of the MSF may approve, without a meeting of the MSF Board, combined brownfield plans and work plans that address eligible activities totaling an amount of \$1.0 million or less and that include reimbursement of taxes levied for school operating purposes. Under the bill, this provision would apply to eligible activities other than those specified in the bill.

Under the Act, instead of seeking approval of a work plan, an authority may seek approval of a combined brownfield plan from EGLE or the MSF. To seek approval of a combined brownfield plan, the authority must provide notice that it will be seeking approval of a combined brownfield plan instead of a work plan to one or more specified entities, depending on the circumstances. This provision also would apply to MSHDA. In addition, the bill would require an authority to notify MSHDA if the authority sought approval of a combined brownfield plan from MSHDA because the combined brownfield plan involved the uses of tax levied for school operating purposes to pay for eligible activities that required approval from MSHDA under the bill.

The bill would specify that a transformational brownfield plan could not include housing development activities.

Report

The Act requires municipal and county treasurers to transmit tax increment revenue to the authority within 30 days after they are collected. Annually, the authority must submit to the governing body, EGLE, and the MSF a financial report on the status of its activities for each calendar year. Under the bill, if the authority's activities included housing development activities, a copy of the report would have to be provided to MSHDA and it would have to contain all the following:

- The number of housing units produced.
- The number of income qualified purchaser households served.
- The number of income qualified renting households assisted.
- For the initial reporting period, the prices at which the housing units were sold or rented.
- Racial and socioeconomic data on the individuals purchasing or renting the housing units, or, if that data were not available, racial and socioeconomic data on the census tract in which the housing units were located.

The Michigan State Housing Development Authority would not be required to approve the report.

Definitions

"Blighted" means property that, among other things, is tax reverted property owned by a qualified local governmental unit, by a county, or by the State. The sale, lease, or transfer of tax reverted property by a qualified local governmental unit, county, or the State after the property's inclusion in a brownfield plan cannot result in the loss to the property of the status as a blighted property for the purposes of the Act. Under the bill, the term would mean, among other things, property that is *previously developed*, or tax reverted property owned by a municipality or by the State. The sale, lease, or transfer of *previously developed* or tax reverted property by a municipality or the State after the property's inclusion in a brownfield plan does not result in the loss to the property for the purposes of the Act.

Under the Act, "economic opportunity zone" means one or more parcels of property that meet all the following:

- That together are 40 or more acres in size.
- That contain or contained a manufacturing operation that consists or consisted of 500,000 or more square feet.
- That are located in a municipality that has a population of 30,000 or less and that is contiguous to a qualified local government.

Under the bill, "economic opportunity zone" would mean one or more parcels of property that meet all the following:

- That together are 40 or more acres in size.
- That contain or contained a manufacturing operation *or an enclosed mall* that consists or consisted of *300,000* or more square feet.
- That are located in a municipality that is contiguous to a qualified local government.

FISCAL IMPACT

Senate Bill 129 (S-3)

Senate Bill 129 (S-3) would have an indeterminate negative fiscal impact on State and local tax revenue through a potential increase in eligible brownfield redevelopment projects. Through tax increment financing, the bill would allow for certain tax revenue from brownfield projects to be reverted to the developers to reimburse them for the development activities specified in the bill. Therefore, the bill likely would decrease State and local tax revenue and reduce the overall revenue for the School Aid Fund through a decrease in the State Education Tax.

The bills also would have an indeterminate fiscal impact on EGLE. The bill likely would result in an overall increase in the number of eligible brownfield redevelopment projects. Because EGLE has review and permitting roles throughout the progress of a brownfield redevelopment project, an increase in eligible projects could result in an increase in labor and costs for EGLE. However, the extent of any cost increase is indeterminate, as the extent of the increase in projects is unknown.

The bill also would have a small negative fiscal impact on MSHDA within LEO. As the bill would move program administration from LEO to MSHDA, the net impact on the Department would be zero; however, MSHDA could see some increased administrative costs for new tasks and reporting requirements under the bill.

Senate Bill 130

The bill would have no fiscal impact on State or local government.

Senate Bills 131 & 132

The bills would have no fiscal impact on State or local government. The bills' proposed changes would amend references to sections that would be modified by Senate Bill 129, to which the bills are tie-barred.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.